

DAVID BURCHARD
CHAPTER 13 TRUSTEE
P.O. BOX 8059
FOSTER CITY, CA 94404
(650) 345-7801 FAX (650) 345-1514
(707) 544-5500 FAX (707) 544-0475

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re:

CUAUHTEMOC TELLEZ CUEVAS
559 TODD RD
SANTA ROSA, CA 95407

Debtor(s)

Chapter 13
Case No: 22-10033 DM
Date: May 11, 2022
Time: 09:10 AM
Cttrn: TELEPHONE/VIDEO

**MOTION OF CHAPTER 13 TRUSTEE, DAVID BURCHARD,
TO DISMISS CASE PRIOR TO CONFIRMATION**

TO: THE ABOVE-NAMED DEBTOR(S) AND TO DEBTOR(S)' ATTORNEY OF RECORD HEREIN:

The Chapter 13 Trustee, DAVID BURCHARD, moves the Court for an order, dismissing this case for cause(s) for the reasons set forth below.

1. This Court has jurisdiction over this matter pursuant to Federal Rules of Bankruptcy Procedure 9013 and 9014, and Bankruptcy Local Rules 9013-1 and 9014-1. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A).
2. This Motion is based upon all documents and records on file, together with this Motion, Declaration and any such additional documents, records and evidence which may be presented.
3. Debtor(s) filed for bankruptcy under Chapter 13 on 01/25/2022.
4. This motion for dismissal is made for cause pursuant to:

11 U.S.C. § 1307(c)(1) as there is unreasonable delay that is prejudicial to creditors.

11 U.S.C. § 1307(c)(4) as Debtor(s) failed to make timely payments to the Trustee. As of the date of this motion, Debtor has not made any plan payments to the Chapter 13 Trustee.

11 U.S.C. §§ 521(e)(2)(A)(i) and (B) as Debtor(s) failed to provide the Trustee with a copy of their 2020 Federal Income Tax Returns.

5. The cause to dismiss this case exists as it is in the best interests of creditors and the bankruptcy estate. The Trustee therefore requests the Court enter an order dismissing this case.

If you wish to oppose dismissal of this Chapter 13 case, you or your attorney must file a timely opposition to this motion no later than fourteen (14) days before the hearing set forth in the accompanying Notice of Motion. You or your attorney must also appear at the hearing date listed in the notice and present argument in opposition to this motion.

DATED: April 4, 2022

DAVID BURCHARD
DAVID BURCHARD, Chapter 13 Trustee

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**DECLARATION IN SUPPORT OF CHAPTER 13 TRUSTEE,
DAVID BURCHARD'S, MOTION TO DISMISS CASE
PRIOR TO CONFIRMATION**

I am the custodian and/or keeper of the business records referenced herein and, as such, I am qualified to certify the authenticity thereof. Additionally, I have personal knowledge of the matters stated in the Declaration. If called upon as a witness, I could and would competently testify to the facts contained herein.

After reviewing the books, records and files of the above-referenced Debtor(s), I make the following Declarations:

1. Debtor(s) filed the instant bankruptcy petition on 01/25/2022. There is unreasonable delay towards plan confirmation that is prejudicial to creditors.
2. As of the date hereof, the following fact(s) exists as cause for dismissal:

<u> </u> <u> </u> <u> </u>	<p>X Failure to make required payments to the Trustee. As of the date of this motion, Debtor has not made any plan payments to the Chapter 13 Trustee.</p> <p>Failure to attend Section 341 Meeting of Creditors scheduled on</p> <p>X Failure to respond to Trustee's requests – see attachment "A".</p>
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I declare under penalty of perjury that the foregoing is true and correct and that this Declaration was executed on April 4, 2022 in Foster City, California.

Dated: April 4, 2022

DAVID BURCHARD

DAVID BURCHARD, Chapter 13 Trustee

CERTIFICATE OF SERVICE

I am over the age of 18 years and not a party to this action. I am employed by the Trustee whose business address is 1065 E. Hillsdale Blvd., Suite #200, Foster City, CA. On the date set forth below, I served a true and correct copy of the **Motion of Chapter 13 Trustee, David Burchard, to Dismiss Case Prior to Confirmation, the Declaration in Support of Chapter 13 Trustee, David Burchard's Motion to Dismiss Case Prior to Confirmation** and this **Certificate of Service**, on the persons listed below by following our ordinary business practice for service, which is either deposited in the ordinary course of business with the U.S. Postal Service by first class mail or served by electronic transmission from the Court, if applicable. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

CUAUHTEMOC TELLEZ CUEVAS
559 TODD RD
SANTA ROSA, CA 95407

The following recipients have been served via Court's Notice of Electronic Filing:

Dated: April 4, 2022

ROSA GARCIA
ROSA GARCIA

DAVID BURCHARD
CHAPTER 13 TRUSTEE
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**UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA**

In re:

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559 TODD RD
SANTA ROSA, CA 95407

Case No.: 22-10033 DM
Chapter 13

ATTACHMENT "A"

Debtor(s)

The Trustee made the following requests at least 30 days prior to the filing date of the instant motion :

1. The debtor's plan was filed after the Notice of Bankruptcy was filed and has not been served on all creditors. Trustee requested the plan be served on all creditors in compliance with Bankruptcy Local Rule 3015-1(b)(1) and that a certificate of service evidencing service of the plan be filed with the Court. The debtor has failed to file he requested document.
2. Trustee requested that the debtor utilize the district model plan, effective December 1, 2017. In additional, Trustee requested the debtor file a certificate of service evidencing service of the plan on all creditors. The debtor has failed to file the district model plan and/or a certificate of service evidencing service of the district plan on all creditors.
3. The debtor has used the "Means Test Tables" for completing Form 122C-1 and/or 122C-2 that are no longer effective. Trustee requested an amended Form 122C-1 and/or 122C-2 which uses the "Means Test Tables" that became effective for cases filed on or after May 1, 2021. The debtor has failed to file an amended Form 122C-1 and/or 122C-2.
4. The debtor has improperly deducted ordinary and necessary business expenses from gross receipts on line 5 of Form 122C-1. Trustee requested an amended Form 122C-1 which includes ordinary and necessary business expenses in question 43 of Form 122C-2. The debtor has failed to file amended Forms 122C-1 and 122C-2.
5. Schedule C lists the value of exemptions for the debtor's assets as "100% of the fair market value, up to any applicable statutory limit." Trustee requested an amended Schedule C which provides an actual dollar amount for all exemptions. The debtor has failed to file an amended Schedule C as requested.

6. Schedule I reflects income from operation of a business; however, the debtor has not filed the required attachment to Schedule I that itemized gross income and expenses. Trustee requested an amended Schedule I with the required attachment. The debtor has failed to file the requested document.
7. The Statement of Financial Affairs indicates that the debtor is married, but Schedule I does not reflect any employment or income information for the spouse. Trustee requested an amended Schedule I which accurately reflects the debtor's non-filing spouse's employment and income information. The debtor has failed to file an amended Schedule I with this information.
8. Question 3 of the Statement of Financial Affairs indicates the debtor lived in a community property state within the last 8 years; however, question 2 of Schedule H fails to reflect this information. Trustee requested an amended Schedule H. The debtor has failed to file the requested document.
9. The information provided in question 27 of the Statement of Financial Affairs is incomplete. Trustee requested an amended Statement of Financial Affairs which provides complete answers to this question. The debtor has failed to file an amended Statement of Financial Affairs.
10. The debtor has been sent the Chapter Thirteen Business Questionnaire to complete. Trustee requested that the questionnaire and its supporting documents be provided no later than seven days prior the schedule 341 Meeting of Creditors. The debtor has failed to provide the completed Chapter 13 Business Questionnaire.
11. Trustee requested a signed copy of the debtor's 2020 filed federal income tax return. The debtor has failed to provide the requested document.